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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/682,586

10/09/2003

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4782-030

9767

24112 7590 02/02/2010

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EXAMINER

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ART UNIT

PAPER NUMBER

3633

MAIL DATE

DELIVERY MODE

02/02/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/682,586
Filing Date: October 09, 2003
Appellant(s): DIGIROLAMO ET AL.

Larry Coats
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/04/2009 appealing from the Office action mailed 08/04/2009.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4677802	Vukmanic	07-1987
5619263	Laughlin et al	04-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-24, 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Vukmanic (4677802).

Vukmanic shows a stud spacer (12) for extending between two studs with each stud having an opening therein, the spacer comprising a main member (17), the main member including first and second end portions(40), a projection (41) extending from one of the end portions, an opening (50) formed in the other end portion, at least one flange (71) for connecting to one of the two studs, spaced apart flanges (71, and at 40) for connecting to one of the two studs, the opening formed in the second end portion of the main member including a slot, a projection receiver (50) formed in the other end portion, either the projection or projection receiver including one or more locking members such that when a projection of one of the spacer is projected into eh receiver of another spacer, a locked condition is realized, either the projection or projection receiver includes one or more stops for engaging the one or more locking members (figure 4), the locking members are disposed on the projection and the stops form a part of the receiver, at least a portion of the projection is deflectable in response to the

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projection engaging the receiver, the projection and receiver are disposed such that when consecutive stud spacers are connected together, the projections and receivers will overlies each other (figure 4), the projection and receiver include a flap that is at least partially flexible, in a locked position, the flaps of the projection and receiver engage each other (figure 4), both the projection and receiver include a flexible flap, a hold down element, an opening disposed between the flap and the hold down element, a deflector, an opening disposed between the deflector and the hold down element.

3. Claims 1, 6-8, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Laughlin et al (5619263).

Laughlin et al (figures 6, 13-18) shows a stud spacer (able to function as claimed) for extending between two studs with each stud (stud not claimed, and the spacer is able to function as claimed) having an opening therein, the stud spacer comprising a main member (83) adapted to extend between the two studs; the main member including first and second end portions; a projection (64) extending from one of the end portions; an opening (the slot surrounding the projection 64) formed in the other end portion; and wherein one stud spacer is adapted to be connected to another stud spacer by extending the projection of the one stud spacer through the opening within one stud and into the opening of another stud spacer (able to function as claimed), the opening formed in the second end portion of the main member including a slot, the main member including a pair of side flanges (the parts touching the parts 32 and 33 in figure 13), a pair of end flanges (the parts on the left and right of part 64), the end flanges are adapted to be connected to the two studs that the stud spacer extends between (able to function as claimed), the main member including a central section and the side flanges are turned out of the plane of

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the central section, at least one end flange is divided into at least two portions and the projections extends between the two portions, the end flanges and the side flanges are turned in opposite directions with respect to the central section.

(10) Response to Argument

With respect to appellant's statements to " Claim Construction", examiner respectfully states that the statements have been fully answered in the office action of 1/10/2007. In the Response to Argument section, examiner fully explained examiner's position (claim construction) to the application of the prior art (Vukmanic) to the claim limitations. The limitations of claims 21-24, 34-38, are clearly to a stud spacer as a subcombination to a wall or a stud. Appellant's arguments to the wall or the studs, clearly are intended use. Vukmanic teaches the claimed "stud spacer" limitation as pointed out in the office actions. The Vukmanic's structures also are able to function as claimed. Furthermore, the claims do not set forth the relationship between studs, whether the studs are spaced apart or adjacent to each other. The 102 rejection is thus proper.

With respect to Laughlin et al, the reference clearly meets the claimed limitations as pointed out and able to function as the claimed stud spacer. Once again, no wall or stud is claimed, and appears to be intended use. Laughlin et al is reasonably broadly interpreted to read on the claimed limitations. There is nothing in the claims that differentiate appellant's claimed structures from Laughlin et al's as set forth in the office action. There is nothing in the claims that would prevent a person from using Laughlin et al's structure as the claimed spacer. Laughlin et al's spacer is about 2 feet long, and spacings between studs in housing constructions generally are about 12-24 inches. Laughlin et al's spacer fit within the normal spacing range between studs

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in housing construction. The opening and projection as set forth in the office action certainly can function as appellant's claimed opening and projection. As pointed out by applicant, Laughlin et al's spacer has the projection which is located on the other side of the structure (121). As shown in figure 4, there is spacing between the end flanges (66) and projection (64). The spacing can certainly function to provide connections between spacers as claimed. There is nothing in Laughlin's structure that would prevent the spacer from being adapted to be connected to another stud spacer by extending the projection of the one stud spacer through the opening within one stud and into the opening of another stud spacer (keeping in mind that the walls or studs are not claimed structures and their dimensions are unknown) . The 102 rejection is thus proper.

With respect to applicant's statements to the studs and its opening and the spacer and how they are to be connected together, examiner notes that the end flanges (66) are wider than the projections (64). A person having a stud (not claimed with dimension unknown) with an opening large enough for the projection and smaller than the end flanges certainly can attach the end flanges to the stud with the projection on the other side of the opening. The web of the stud (not claimed with dimension unknown) may have a thickness that is about half the spacing of the opening between 66 and 64 as shown in figure 4. Extra length of the projection which is beyond the web of the stud, can then be inserted into the opening of another spacer as claimed. The 102 rejection is thus proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Phi D. A/

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Conferees:

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636

/HEATHER SHACKLEFORD/

Conferee